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NOT TO BE PUBLISHED

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

In re SERGIO C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. SERGIO C., Defendant and Appellant.	E029134 (Super.Ct.No. J273767) **OPINION**

APPEAL from the Superior Court of San Bernardino County. John P. Wade, Judge. Affirmed.

Steven A. Seick, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Patti W. Ranger, Supervising Deputy Attorney General, and Laura D. Stilwell, Deputy Attorney General, for Plaintiff and Respondent.

Minor admitted to driving with a blood alcohol level of 0.08% or higher (Veh. Code, § 23152, subd. (a)) and possession for sale of a controlled substance (Health & Saf. Code, § 11379, subd. (a)). Thereafter, following a contested dispositional hearing, minor was committed to the California Youth Authority (CYA) for a maximum term of three years four months. Minor's sole contention on appeal is that the juvenile court abused its discretion in committing him to CYA. We find no abuse and will affirm the judgment.

I

FACTUAL BACKGROUND[1]

On September 7, 2000, undercover police officers approached minor and his friend and asked if they knew where to buy illegal drugs. Minor said he knew where to get some and drove the officers to a house of an acquaintance. When they arrived at the location, one officer gave minor $20, and minor went inside. Minor returned a few minutes later and handed the officers a baggie containing 0.2 grams of methamphetamine.

Three months later, on December 5, 2000, an officer stopped minor for speeding. The officer conducted a field sobriety test and concluded that minor was under the influence of alcohol.

II

DISCUSSION

Minor contends the juvenile court erred in committing him to CYA without adequately considering the probable benefit of CYA and less restrictive placement

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[1] The factual background is taken from the probation officer's report dated February 21, 2001.

alternatives. We disagree. The record clearly demonstrates the court considered the benefits of CYA on minor as well as alternatives but rejected them as inappropriate.

On appeal, "[w]e review a commitment decision only for abuse of discretion, and indulge all reasonable inferences to support the decision of the juvenile court. [Citations.] Furthermore, it is clear that a commitment to the Youth Authority may be made in the first instance, without previous resort to less restrictive placements. [Citation.]" (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; see also *In re James H.* (1985) 165 Cal.App.3d 911, 922.) "An appellate court will not lightly substitute its decision for that of the juvenile court, as the former must indulge in all reasonable inferences in support of the latter's decision and will not disturb it unless unsupported by substantial evidence." (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 617.)

In order to determine whether there was substantial evidence to justify a CYA commitment, we must examine the record of the dispositional hearing in light of the purposes of juvenile court law. (*In re Todd W.* (1979) 96 Cal.App.3d 408, 416-417.) A fundamental change in the purpose of juvenile court law took place in 1984, at which time the Legislature expressed a change in priorities by revising the language of section 202. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) The new language in this section recognizes punishment as a rehabilitative tool and places greater emphasis on the protection and safety of the public as opposed to any benefit the minor might enjoy by receiving the least restrictive type of commitment. (*Ibid.*) Since retribution must not be the sole reason for punishment, there must be evidence demonstrating probable benefit to the minor and the

inappropriateness or ineffectiveness of the less restrictive alternatives. (*Ibid.*; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.)

In addition, "[i]n determining the judgment and order to be made in any case in which the minor is found to be a person described in Section 602, the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor's previous delinquent history." (§ 725.5.)

After a review of the entire record, we conclude there is substantial evidence to support the commitment to CYA. The juvenile court properly found that commitment to CYA would be of probable benefit to minor based on the programs available at that facility. The court explained, "If [minor] continues in the community, he will not get any education. He will not get any vocational training. He will not get rid of his drug habit, which is extensive and pervasive." After considering all of the factors and circumstances required by law, the court concluded that it was "fully satisfied that the mental and physical condition and qualifications of the minor are such as to render it probable that the minor will be benefited by the reformatory, education, discipline or other treatment provided by the California Youth Authority."

The probation officer also indicated the benefits of CYA for minor. The probation officer indicated that at CYA "minor would be placed in a high school program, a gang intervention program, substance abuse counseling, victims impact class, anger management, and the young fathers program." Although the probation officer initially recommended minor serve additional time in juvenile hall, followed by release on probation in the custody

of his parents with a "zero-tolerance" policy, she changed her recommendation following the statements made by Officer Wishart, one of the officers involved in the undercover sale of narcotics by minor, regarding the circumstances of minor's arrest and his investigation.[2]

The probation officer's report and the testimony of Officer Wishart contain substantial evidence to support the court's conclusion. The record shows that minor needs educational or vocational services and substance abuse counseling. Minor admitted to the probation officer that he smoked marijuana on weekends and tried methamphetamine four times. According to the detention report, minor admitted using marijuana on a daily basis, and his current offenses involved driving under the influence of alcohol and possessing methamphetamine for sale.

Further, minor has been uncooperative and unwilling to abide by the rules of the juvenile hall staff; minor's performance at school has been less than even mediocre. The probation report indicates minor was in the tenth grade when he should have been in the twelfth grade; he has earned 30 units out of 230 to graduate and his grade point average is 0.450. He received 50 discipline referrals between December 12, 1996, and December 11,

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[2] At the dispositional hearing, Officer Wishart detailed the narcotics transactions involving minor as indicated in the probation report as well as statements minor made to him during these transactions. The statements minor made to Officer Wishart indicated that minor was involved in stealing cellular telephones as well as vehicles, selling narcotics, assaults with deadly weapons, gang activity, obtaining counterfeit licenses and social security cards, selling illegal firearms, and carjackings. Officer Wishart also stated that minor "talked a lot," that juveniles tended to exaggerate, and that minor was trying to earn the esteem of gang members. He explained that he believed minor was more involved in criminal activity than his record showed, especially regarding narcotics, as minor smoked methamphetamine in the car in front of the officers on their way to the second drug transaction. He also opined that the first location where

[footnote continued on next page]

2000, including referrals for disruption or defiance, possession of a controlled substance, truancy and possession of tobacco.

Minor's principal argument against the appropriateness of his CYA commitment is that the juvenile court failed to fully explore less restrictive alternatives. We confirm that substantial evidence supports the juvenile court's finding that a less restrictive alternative would be ineffective and inappropriate. The court indicated that "[p]revious attempts at rehabilitation as accomplished by the Juvenile Traffic Court have been unsuccessful." The court further stated that it "has weighed and considered less restrictive alternatives and rejects them as not appropriate."

The record in this case is replete with examples of minor's delinquent history, including arrests for assault (Pen. Code, § 245) and unlawful sexual intercourse (Pen. Code, § 261.5, subd. (b)), a citation for disturbing the peace (Pen. Code, § 415.5), driving without a license (Veh. Code, § 12500, subd. (a)) and not having proof of insurance (Veh. Code, § 16028, subd. (a)), as well as drug and alcohol abuse, associating with gang members, impregnating a 13-year-old girl (an action sanctioned by his parents), failing to attend school, lack of remorse, poor moral and social judgment, and criminal sophistication. This amply supports a CYA commitment.

The statutory scheme guiding the juvenile court in its treatment of juvenile offenders '"contemplates a progressively restrictive and punitive series of disposition orders in cases such as that now before us — namely, home placement under supervision, foster home

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[footnote continued from previous page]
minor bought drugs was occupied by gang members and noted that minor spoke in gang lingo and portrayed the image of a gang member or an up-and-coming gang member.

placement, placement in a local treatment facility and, as a last resort, Youth Authority placement.'" (*In re Aline D.* (1975) 14 Cal.3d 557, 564; see also *In re Bryan* (1976) 16 Cal.3d 782, 788; *In re Arthur N.* (1976) 16 Cal.3d 226, 237.) Nonetheless, while CYA is considered a final treatment resource (*In re Michael R.* (1977) 73 Cal.App.3d 327, 337), "there is no absolute rule that a Youth Authority commitment should never be ordered unless less restrictive placements have been attempted." (*In re Ricky H.* (1981) 30 Cal.3d 176, 183.) Instead, the record need only show, as it does here, probable benefit to the minor from commitment to CYA and less restrictive alternatives were considered and rejected. (*In re George M.* (1993) 14 Cal.App.4th 376, 379; *In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 576.)

Minor's current offenses were the culmination of an accelerating disregard for authority, both at home and at school, and a general disregard for the members of his community. CYA will remove minor from his current environment and protect the community while offering more hope for his rehabilitation than probation or placement. Minor's escalating delinquency, negative peer association, poor academic progress, substance abuse, age, and gang involvement are all reasons for the inappropriateness of a less restrictive disposition. The court articulated reasonable concerns for the community and minor's rehabilitation, concerns that can only be addressed by CYA given minor's history and current offense. Minor's arguments to the contrary are to no avail.

We thus conclude the juvenile court did not abuse its discretion by committing minor to CYA.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

RICHLI
J.

We concur:

McKINSTER
Acting P.J.

GAUT
J.